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*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC and  
the Chapter 7 Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC and  
the Chapter 7 Estate of Bernard L. Madoff,

Plaintiff,

v.

JOHN FUJIWARA *et al.*,

Defendants.

Adv. Pro. No. 10-04289 (CGM)

**MOTION TO REOPEN ADVERSARY PROCEEDING**

Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated liquidation

of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq., and the Chapter 7 estate of Bernard L. Madoff, respectfully moves for an order reopening the above-captioned adversary proceeding (the “Adversary Proceeding”) because of an uncured default by Defendant John Fujiwara (“Mr. Fujiwara”) under the parties’ settlement agreement (the “Settlement Agreement”).

### **BACKGROUND**

In November 2010, the Trustee commenced the Adversary Proceeding against Mr. Fujiwara and his late wife, Gladys Fujiwara (together with Mr. Fujiwara, the “Fujiwaras”). (ECF No. 1.) The Trustee alleged that the Fujiwaras received certain avoidable transfers (the “Avoidable Transfers”) from BLMIS in the two-year period prior to its collapse in connection with their investment advisory account. (*Id.*) During the pendency of the Adversary Proceeding, Gladys Fujiwara died, and Mr. Fujiwara was substituted in as a defendant in his capacity as the executor of his late wife’s estate. (ECF No. 65.)

In or about June 2019, the Trustee and Mr. Fujiwara agreed to enter into the Settlement Agreement to resolve all claims with respect to the Avoidable Transfers as well as any and all other claims they could have also asserted in the Adversary Proceeding. (Rollinson Decl. ¶ 3.) As part of the settlement, Mr. Fujiwara agreed to pay the Trustee a certain sum (the “Settlement Amount”) in three installments. (*Id.*) The Settlement Agreement became effective on January 13, 2020. (*Id.*) On January 17, 2020, the parties filed a stipulation for voluntary dismissal, which this Court so ordered, wherein the Adversary Proceeding was dismissed “without prejudice subject to the Trustee having the right to re-open th[e] adversary proceeding in the event of an uncured default under the Settlement Agreement or a certain note and mortgage attached thereto.” (ECF 100, ¶ 6.)

Although Mr. Fujiwara paid the first of the installment payments, he failed to pay the second installment in January 2022 as required under the Settlement Agreement. (Rollinson Decl. ¶ 5.) By letter dated February 2, 2022, the Trustee’s counsel advised Mr. Fujiwara of his failure to timely pay the second installment, and provided him the opportunity to make the payment within 10 business days. (*Id.*) Mr. Fujiwara chose not to do so. (*Id.*)

**RELIEF REQUESTED**

The Trustee respectfully moves this Court to reopen the Adversary Proceeding to allow the Trustee to take steps to collect the outstanding amounts due and owing under the Settlement Agreement. In support of this Motion, the Trustee submits the Declaration of James H. Rollinson, Esq. (“Rollinson Decl.” attached hereto as Exhibit A). For the Court’s convenience, the Trustee also attaches as Exhibit B a proposed order reopening the Adversary Proceeding.

Date: March 23, 2022  
New York, New York

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